

**Summary of Comments**  
**Submitted in Response to First 15-Day**  
**Comment Period**  
**(Appendix 3 to Final Statement of Reasons)**

**Section 2548.1**

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(Comment dated September 5, 2006)

This commenter believes that the word “clarify” should be substituted for the word, “implement” in the authority and purpose section of the regulations, in light of the fact that the underlying statute has been in effect for several years.

Response: The Commissioner believes that it is appropriate to include both “implement and clarify” since that is the purpose of these regulations, despite the number of years the statute has been in effect. Thus the regulation has been modified to include the word, “clarify.”

**Section 2548.2(e)**

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(Comment dated September 5, 2006)

This commenter suggests adding the word “respectively” immediately preceding the word, “herein” in Proposed Section 2548.2(e). In addition, this commenter believes that the entire last sentence should be deleted from Section 2548.2(e)

Response: The Commissioner does not believe that the word “respectively” is necessary. The Commissioner also rejects deleting the entire last sentence of Section 2548.2(e). The Commissioner believes that it is necessary to include this sentence as it provides additional clarification that a provider cannot transfer a legal interest in a viaticated policy to a financing entity without the latter also being licensed as a viatical settlement provider. (See Proposed Section 2548.3; see also Commissioner’s response to comment dated June 8, 2006 of M. Bryan Freeman, pages 27-28 of Appendix 1 to Final Statement of Reasons.) The Commissioner agrees, however, that the last sentence should read, “life insurance policy” as opposed to “life policy,” and has accordingly made this modification.

**Section 2548.2(f)**

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(Comment dated September 5, 2006)

This commenter suggests removing the comma appearing after the word “California,” and inserting a comma immediately following the word, “who.”

Response: The Commissioner agrees with the two grammatical suggestions.

**Section 2548.2(a)**

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(Comment dated September 5, 2006)

The California Life Settlement Association believes that Section 2548.2(a), as revised, properly differentiates between life and viatical settlements.

**Section 2548.2(e)**

Doug Head  
Life Insurance Settlement Association  
1504 E. Concord St.  
Orlando, FL 32803  
(Comment dated September 5, 2006)

This commenter suggests the deletion of the last sentence in Section 2548.2(e).

Response: The Commissioner prefers that this sentence remains, for the reasons explained in the Commissioner’s response to comment dated September 5, 2006 of Adam C. Altman at herein at page 1 of Appendix 3 to Final Statement of Reasons.

**Section 2548.2(g)**

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(Comment dated September 5, 2006)

This commenter advocates exempting from treatment as securities whole (non-fractionalized) life insurance policies, as well as fractionalized interests in life insurance sold for value. The latter, the commenter asserts, is consistent with their treatment by the Corporate Securities Law of 1968. If the Department wants to regulate such, it should adopt specific provisions governing this subject matter, and should change the phrase, “. . . is an interest in . . .” to instead read, “is a fractionalized interest in. . .”

In addition, to clarify that a licensed viatical settlement provider would not be acting as a viatical settlement investment broker in the course of dealing with sources of capital which provide financing for viatical settlements, the Department should define a viatical settlement investment as a “fractionalized interest in a viatical settlement, offered by a person other than a viatical settlement provider licensed by the Commissioner to a purchaser other than a viatical settlement provider licensed by the Commissioner.”

Response: See Commissioner’s Response to comment of Adam C. Altman dated June 9, 2006 at pages 22 - 23 in Appendix 1 to Final Statement of Reasons.

Additional Response: The Commissioner rejects limiting its jurisdiction over the sale of investments in viatical settlements to “fractionalized interests” therein. It has been the Department of Insurance’s experience that rampant fraud exists in the marketing by life insurance agents of not only fractionalized interests in viatical settlements, but also single, nonfractionalized life policies which have been viaticated. The Commissioner believes that it is appropriate to regulate this area because the fraud perpetrated is nearly exclusively done so by a small number of dishonest life insurance agents licensed by the California Department of Insurance.

The Commissioner also rejects the commenter’s suggested language defining a “viatical settlement investment.” The Commissioner believes that this section is somewhat confusing and does not mesh with the Commissioner’s regulatory objectives. That is, even ignoring the “fractionalized interest” requirement in commenter’s definition, it appears to require two additional indicia defining “viatical settlement investment:” (1) it is offered by a person other than a licensed viatical settlement provider; (2) it is offered to a purchaser other than a viatical settlement provider. The Commissioner believes that this is inaccurate, because it is possible for a *licensed* viatical settlement provider to offer investments in viatical settlements to nonlicensed purchasers, and the Commissioner does not want to exclude this possibility from the definition of viatical settlement investments. The Commissioner thus prefers its own definition contained at Section 2548.2(g), particularly as augmented by the suggested language offered by the California Department of Corporations.

#### **Section 2548.2(h)**

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(Comment dated September 5, 2006)

This commenter believes that the definition of “viatical settlement investment broker” should be modified to clarify that the persons to whom investments are marketed, are limited to residents of California.

Response: This comment is outside the scope of the changes noticed in the first 15-day comment period, and this comment will not be considered.

#### **Section 2548.2(i)**

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(Comment dated September 5, 2006)

This commenter asserts that the definition of viatical settlement provider should be modified to “obtains” an ownership interest in a viatical settlement, as opposed to “has an ownership interest.” Otherwise, an out of state resident owner of a policy could be considered a provider.

The commenter, in addition, advocates that the Commissioner revisit its position prohibiting the assignment of policy ownership to unlicensed third parties. An assignment of mere beneficial rights does not necessarily satisfy many financing entities, which will have the effect of diminishing the availability of competitive offers to prospective viators in the California market. If the Department is concerned about third parties having access to sensitive biographical information regarding the policyholder, the commenter invites the Department to once again reconsider the commenter’s definition of “provider” originally suggested in his letter of June 9, 2006. The proffered definition is similar to the one contained in Proposed Section 2548.2(h), except it also exempts from the definition of “provider” accredited investors, qualified institutional buyers, and a person who consummates no more than one viatical settlement transaction per year.

Response: The Commissioner believes that the use of the word, “obtains” is not required and the Commissioner believes that the commenter’s interpretation of the word, “has” is not a reasonable one in light of the entire context of this provision. Moreover, it appears this suggested revision is outside the scope of the changes noticed in the first 15-day comment period.

With respect to the commenter’s suggestion that the Commissioner revisit the Commissioner’s position that a licensed viatical settlement provider should not be allowed to transfer a legal interest in a purchased viatical settlement to a nonlicensed

funding source, along with suggested language, it appears that the bulk of this comment is outside the scope of changes noticed in the first 15-day comment period. In any event, the Commissioner has discerned no argument compelling it to ignore its long-standing interpretation of Sections 10113.1(a)(1) and 10113.2(b)(1) of the California Insurance Code. (See the Commissioner's response to comment dated June 8, 2006 of M. Bryan Freeman at pages 27-28 of Appendix 1 to Final Statement of Reasons.

#### **Section 2548.2(j)**

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(Comment dated September 5, 2006)

The commenter believes a comma should be inserted immediately following the word "condition" and that the word "and" should be inserted after this comma. The commenter believes that another comma should be inserted after the phrase "or is considering entering into," and the word, "a" should precede "viatical provider" as opposed to "the."

Response: The Commissioner agrees to insert a comma after "condition" but does not believe that an "and" is required afterwards. The Commissioner also rejects the other suggested changes, as the regulation's clarity appears to be better under the existing formulation.

#### **Section 2548.2**

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The commenter requests for the words "licensee" and "applicant" to be defined.

Response: This suggestion is beyond the scope of the changes noticed in the first 15-day comment period and accordingly will not be considered.

#### **Section 2548.3**

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(Comment dated September 5, 2006)

The commenter suggests changes consistent with its earlier suggested revision to the definition of viatical settlement provider. The commenter's revisions would also require an assignee of a viatical settlement provider to execute in writing its promise to not release any personally-identifying information concerning the viator or insured. If the language remains as it appears in the version of the regulations accompanying the Commissioner's first 15-day comment period, the commenter suggests removing the comma following the word, "agreement."

Response: The Commissioner rejects the commenter's initial premise that some parties (namely funding sources meeting specific criteria) are to be exempt from the definition of a viatical settlement provider, for the same reasons as contained in the Commissioner's response to comment of M. Bryan Freeman dated June 8, 2006, at pages 27-28 of Appendix 1 to Final Statement of Reasons. Therefore commenter's suggested language protecting the privacy rights of the insured against nonlicensed third party funders is not required.

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(Comment dated September 5, 2006)

With respect to Section 2548.3, the commenter believes that this provision will likely limit the marketplace and prices paid for viatical settlements, although the commenter recognizes that this may be required as a consequence of California Insurance Code, Section 10113.1(a)(1). Mr. Boyden hopes that the Commissioner will join the life settlement industry in any future life settlement bill that has as one of its key components a provision to avoid the restriction of capital flow in the life settlement marketplace. The commenter also hopes that the Commissioner will consider a revision in the viatical settlement law.

Response: The Commissioner agrees that California Insurance Code, Sections 10113.1(a)(1) and 10113.2(b)(1) require the prohibition in Section 2548.3 of the use of outside unlicensed financing entities acquiring a legal interest in a viaticated policy. The Commissioner would be pleased to consider any new legislative proposals covering either life or viatical settlements once such are introduced by the Legislature.

Doug Head  
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(Comment dated September 5, 2006)

This commenter continues to object to Section 2548.3 because it prohibits licensed providers from transferring a legal interest in a viaticated policy to an unlicensed

purchaser. The commenter believes that this rule encumbers the rights of all policyholders involved in a viatical settlement transaction.

Response: See Commissioner's response to comment dated June 8, 2006 of M. Bryan Freeman at pages 27-28 of Appendix 1 to Final Statement of Reasons.

#### **Section 2548.4**

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(Comment dated September 5, 2006)

The commenter suggests that the words, "viator" and "viator's" should be replaced with "insured" and "insured's" in the last sentence of this section. The commenter also assumes that the possessive form in "viator's" is a mistake.

Response: The Commissioner agrees and has, accordingly, made the suggested revisions.

#### **Section 2548.5**

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The commenter has restructured the disclosure provision of the regulations to tailor different disclosures to be triggered when an offer is made to the viator, and at the time a contract is executed. In addition, some of the disclosures are tailored to the viator, and some to the insured. As to the later, the disclosures are apparently designed to handle instances where the viator and the insured are not the same.

Response: The Commissioner rejects the commenter's "dual stage" disclosure requirement, as the Commissioner believes that the provision is unnecessarily lengthy, complex, and therefore difficult to follow. Further, although the commenter extensively discusses which regulated party (the broker or the provider) would be most likely to have contact with the viator/insured at certain stages, in the Commissioner's view, these generalities do have exceptions. The Commissioner prefers, therefore, Section 2548.5's more flexible approach whereby either the broker or the provider can make the disclosures, and if the broker makes them, the provider need not, as long as there is documentation in the provider's file that the disclosures were made.

The Department has considered the commenter's suggestion that it could possibly violate existing or future privacy laws for the viatical settlement provider or broker to disclose

life expectancy estimates to the viator, as opposed to the insured. To accommodate this concern, the Department has changed the regulations to add the clause, “unless such disclosure would violate any California or federal privacy law.”

#### **Section 2548.6**

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(Comment dated September 5, 2006)

This commenter suggests that there be inserted the language allowing for the transfer of not only a legal interest, but also a beneficial interest in an insurance policy in a viatical settlement.

Response: The Commissioner agrees with this suggestion and has accordingly made this revision.

#### **Section 2548.7**

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The commenter suggests that Section 2548.7(e) should be amended to instead read “act in the capacity of both a viatical settlement broker and a viatical settlement provider in the same viatical settlement unless authorized in advance, in writing, by the Commissioner.”

In addition, the commenter makes suggestions pertaining to Section 2548.7(k). The commenter would prefer “use a form of viatical settlement agreement” to “use forms.”

Response: The Commissioner disagrees with commenter’s qualification that the Commissioner’s authorization is required only where the licensee acts in the capacity of provider and broker in the same transaction. This is not the Commissioner’s interpretation; permission is required whenever a viatical settlement broker also wishes to assume licensure as a provider, or a licensed provider wishes to obtain a viatical settlement broker’s license, as the Commissioner would want to review the requesting party’s plan of operations to ensure that conflicts of interest are avoided. The Commissioner does agree, however, that the permission shall be obtained in advance, and in writing, and makes this change accordingly.



With respect to commenter's suggestions pertaining to Section 2548.8(k), the Commissioner has interpreted California Insurance Code, Section 10113.2(c) to require the approval of forms *other* than the viatical settlement agreement. For example, when a provider is licensed, all forms, including escrow contracts, medical releases, etc., are reviewed and approved. The Commissioner therefore rejects this change. The Commissioner does agree, however, that approval should be made in advance and has accordingly made this revisions.

### **Section 2548.8**

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The commenter asserts that Section 2548.8(f) is vague and overbroad because not all parties tangentially involved in a viatical settlement are required to be licensed. The commenter also contends that Section 2548.8(f) is not required because Section 2548.8(c) would already address such violations.

Response: The Commissioner agrees with the commenter's suggestion re Section 2548.8(f), and has accordingly made the modification. The Commissioner wishes to include Section 2548.8(f), however, as an affirmative reminder that licensees are required to do business with other licensed entities, *if* a license is required. This is to directly address the occurrence of life agents attempting to viaticate policies through nonlicensed providers.

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The Commenter argues that the phrase "set up" in Section 2548.8(h) should instead read "establish and maintain."

Response: The Commissioner agrees and has made this revision.

